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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2012-277

12 **TOYA LAVETTA GIBSON aka TOYA**  
13 **LOVETTA GIBSON**  
14 **592 Ammunition Road, Apt. 16**  
**Fallbrook, CA 92028**

**FIRST AMENDED**  
**ACCUSATION**

15 **Registered Nursing License No. 628722**  
16 **Nurse Practitioner Certificate No. 19263**  
**Public Health Nurse Certificate No. 70252**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this First Amended Accusation  
22 solely in her official capacity as the Interim Executive Officer of the Board of Registered  
23 Nursing, Department of Consumer Affairs, State of California.

24 2. On or about October 31, 2003, the Board of Registered Nursing issued Registered  
25 Nurse License Number 628722 to Toya Lavetta Gibson aka Toya Lovetta Gibson (Respondent).  
26 The Registered Nurse License was in full force and effect at all times relevant to the charges  
27 brought herein and will expire on May 31, 2013, unless renewed.

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3. On or about August 20, 2009, the Board of Registered Nursing issued Nurse Practitioner Certificate Number 19263 to Toya Lavetta Gibson aka Toya Lovetta Gibson. The Nurse Practitioner Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2013, unless renewed.

4. On or about May 26, 2006, the Board of Registered Nursing issued Public Health Nurse Certificate Number 70252 to Toya Lavetta Gibson aka Toya Lovetta Gibson. The Public Health Nurse Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2013, unless renewed.

## JURISDICTION

5. This First Amended Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time.

## STATUTORY PROVISIONS

8. Section 490 of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

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9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

10. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

• • •

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

• • • •

11. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a

record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

.....  
(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

12. Section 11350(a)(1) of the Health and Safety Code states:

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

#### REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

14. California Code of Regulations, title 16, section 1445, states:

...  
(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

1 (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of  
2 the Penal Code.

3 (6) Evidence, if any, of rehabilitation submitted by the licensee.

### 4 COSTS

5 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
6 administrative law judge to direct a licentiate found to have committed a violation or violations of  
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
8 enforcement of the case.

### 9 DRUGS

10 16. Dilaudid is a Schedule II controlled substance pursuant to Health and Safety Code  
11 section 11055(b)(1)(J) and a dangerous drug per Business and Professions Code Section 4022.  
12 Dilaudid is a brand name for the generic drug hydromorphone and is used to treat pain.

13 17. Morphine/Morphine Sulfate is a Schedule II controlled substance pursuant to Health  
14 and Safety Code Section 11055(b)(1)(L) and a dangerous drug per Business and Professions Code  
15 Section 4022. Morphine is in a class of drugs called narcotic analgesics used to treat pain.

16 18. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code  
17 section 11055(b)(1)(M), and a dangerous drug per Business and Professions Code section 4022.  
18 Oxycodone is an opioid used to treat pain.

19 19. Tylenol 3 is a schedule III controlled substance pursuant to Health and Safety Code  
20 Section 11056 and a dangerous drug per Business and Professions Code Section 4022. Tylenol 3  
21 is the generic name for codeine with acetaminophen and is a narcotic pain reliever (analgesic).

22 20. Ativan is a Schedule IV controlled substance pursuant to Health and Safety Code  
23 Section 11057(d)(16) and a dangerous drug per Business and Professions Code Section 4022.  
24 Ativan is a brand name for the generic drug lorazepam and is used to treat anxiety.

25 21. Triazolam is a Schedule IV controlled substance pursuant to Health and Safety Code  
26 Section 11057(d)(30) and a dangerous drug per Business and Professions Code Section 4022.  
27 Triazolam, a benzodiazepine, is a generic name for the brand name drug Halcion and is used to  
28 treat insomnia.

22. Valium is a Schedule IV controlled substance pursuant to Health and Safety Code Section 11057(d)(9) and a dangerous drug pursuant to Business and Professions Code Section 4022. Valium is a brand name for the generic drug diazepam and is used to treat anxiety.

23. Zolpidem is a Schedule IV controlled substance pursuant to Health and Safety Code Section 11057(d)(32) and a dangerous drug pursuant to Business and Professions Code Section 4022. Zolpidem is used to treat insomnia.

### **FIRST CAUSE FOR DISCIPLINE**

#### **(Unlawful Possession of Controlled Substances)**

24. Respondent is subject to disciplinary action under Code section 2762(a) in that Respondent obtained or possessed in violation of law, dangerous drugs or controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code. The circumstances are as follows:

Between June 1, 2010 and July 26, 2010, Respondent was working as a traveling nurse at the University of California, San Diego Medical Center. During this time frame the Pyxis<sup>1</sup> medication dispensing system documented that Respondent removed controlled substances and dangerous drugs from the machine but did not account for them as follows:

#### **1. Patient 650**

On July 7, 2010, Patient 650 was prescribed triazolam 0.125 mg. as needed for insomnia. The Pyxis report documents that Respondent removed 1 tablet of triazolam 0.125 mg on July 8, 2010 at 2224 hours. The Medication Administration Record (MAR) shows that the only administration of this medication was on July 7, 2010 at 2252 hours by nurse SBP for insomnia. The Pyxis record does not indicate that Respondent wasted or returned the medication that she removed. Respondent failed to account for the medication.

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<sup>1</sup> Pyxis is a trade name for the automated single-unit dose medication dispensing system that records information such as patient name, physician orders, date and time medication is withdrawn, and the name of the licensed individual who withdrew and administered the medication. Each user/operator is given a "user ID" code to operate the control panel. The user is required to enter a second personal secret "PIN" number, similar to an ATM machine, to gain access to the medications. In this manner the machine documents who withdrew medication at what time for which patient.

1                   2.     **Patient 045**

2           On June 26, 2010 through July 26, 2010, Patient 045 was prescribed injectable lorazepam  
3     0.5 mg for nausea, vomiting and anxiety as needed, every six hours. The Pyxis report shows that  
4     Respondent removed one 2-mg. vial of lorazepam on June 26, 2010 at 2045 hours. The Pyxis  
5     report documents that Respondent wasted 1.5 mg. of Lorazepam. The MAR shows that  
6     Respondent's administration of the remaining medication did not occur until 2220 hours.

7                   3.     **Patient 301**

8           On July 3, 2010 through August 3, 2010, Patient 301 was prescribed acetaminophen with  
9     codeine 60 mg. for pain as needed every four hours. The Pyxis report shows that Respondent  
10    removed three 12-mg. doses on July 3, 2010 at 2232 hours, and another two 12 mg. doses at 2232  
11    hours, and at 2324 hours, Respondent wasted 24 mg. of Acetaminophen with Codeine 60 mg.,  
12    failing to account for 36 mg. On July 4, 2010, Respondent removed three 12-mg. doses at 0519  
13    hours and another two 12 mg. doses at 0519 hours. The MAR shows that Respondent  
14    administered the medication at 0611 hours on July 4, 2010. Between July 3-4, 2010, Respondent  
15    removed at least eight 12-mg doses of acetaminophen with codeine and recorded on the MAR as  
16    giving only 60 mg. and failed to account for 36 mg.

17                  4.     **Patient 983**

18           On June 29, 2010 through July 29, 2010, injectable hydromorphone 0.5 mg was prescribed  
19    for Patient 983 for mild pain as needed every four hours, and injectable hydromorphone 1 mg for  
20    moderate pain as needed every two hours. The Pyxis report shows that Respondent removed one  
21    2-mg. syringe of hydromorphone on July 2, 2010 at 2349 hours. The MAR does not indicate that  
22    Respondent administered this medication. There are no Pyxis transactions indicating that  
23    Respondent wasted or returned the medication that she removed, thus Respondent failed to  
24    account for the 2 mg. syringe of hydromorphone.

25                  5.     **Patient 614**

26           On July 2, 2010 through August 1, 2010 Patient 614 was prescribed diazepam 5 mg for  
27    muscle spasms as needed every eight hours. On July 4, 2010 at 0158 hours the Pyxis report  
28    indicates that Respondent removed 1 tablet of diazepam 5 mg, however the MAR does not

document that this medication was given. Respondent failed to account for this tablet of diazepam.

### SECOND CAUSE FOR DISCIPLINE

(False or Grossly Inconsistent or Incorrect Entries in Medical Records)

25. Respondent is subject to disciplinary action under Code section 272(e) in that Respondent made false, grossly incorrect, or grossly inconsistent entries in a patient medical record. The circumstances are as follows:

a. On July 2, 2010 through August 1, 2010, Patient 614 was prescribed diazepam 5 mg for muscle spasms as needed every eight hours. The MAR indicates this medication was administered at 2326 hours by Respondent for insomnia. Respondent charted giving the medication for insomnia when it was prescribed for muscle spasms.

b. On July 2, 2010 through August 1, 2010, Patient 614 was prescribed morphine 45 mg 3 SR tablets every eight hours. The Pyxis report documents that Respondent removed 3 tablets of Morphine 15 mg. on July 4, 2010 at 0631 hours. The MAR shows that this medication was recorded as being given by Respondent on July 4, 2010 at 0609 hours, twenty-two minutes before it was obtained from the Pyxis machine.

c. On July 2, 2010 through August 1, 2010, Patient 614 was prescribed Oxycodone 10 mg. tablets every four hours. The Pyxis report shows that Respondent removed two 5 mg. tablets of Oxycodone on July 4, 2010 at 0631 hours. The MAR states that this medication was administered at 0609 hours, twenty-two minutes before it was obtained from the Pyxis machine.

d. On June 26, 2010 through July 26, 2010, Patient 045 was prescribed injectable lorazepam 0.5 mg for nausea, vomiting and anxiety as needed, every six hours. The Pyxis report shows that Respondent removed one 2-mg. vial of lorazepam on June 26, 2010 at 2045 hours. The Pyxis report documents that Respondent wasted 1.5 mg. of Lorazepam. The MAR shows that Respondent's administration of the remaining medication did not occur until 2220 hours.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 (May 17, 2011 Criminal Conviction for Driving Under  
3 the Influence of Alcohol on February 10, 2011)

4 26. Respondent is subject to disciplinary action under Code sections 490, and 2761(f), in  
5 that Respondent was convicted of a crime that is substantially related to the qualifications,  
6 functions, and duties of a registered nurse. The circumstances are as follows:

7 a. On or about May 17, 2011, in a criminal proceeding entitled *People of the State*  
8 *of California v. Toya Lavetta Gibson*, in Los Angeles Superior Court, case number. INW00873,  
9 Respondent was convicted on her plea of *nolo contendere* to violating Vehicle Code section  
10 23152(a), driving under the influence of alcohol, and *nolo contendere* to violating Vehicle Code  
11 section 14601.2(A), driving with a suspended license, both misdemeanors. Additionally,  
12 Respondent admitted sustaining a prior violation of Vehicle Code section 23152(a), in Case  
13 Number 10SM02999, of the Superior Court of California, County of Orange, Harbor Justice  
14 Center. Respondent also admitted that she willfully refused a peace officer's request to submit to  
15 and complete chemical tests.

16 b. As a result of the conviction with a prior DUI, on or about May 17, 2011,  
17 Respondent was sentenced to five years summary probation, and ordered to serve 30 days in the  
18 Los Angeles County Jail, pay fines and assessments, and successfully complete an 18-month  
19 second-offender alcohol and other drug education and counseling program.

20 c. As a result of the driving with a suspended license conviction, Respondent was  
21 sentenced to 3 years summary probation, and ordered to serve 10 days in the Los Angeles County  
22 Jail, consecutive to the jail time ordered for the violation of Vehicle Code section 23152(a), pay  
23 fines and assessments in the amount of \$1,330.00, and not drive a motor vehicle for 3 years  
24 without an ignition interlock device.

25 d. The facts that led to the convictions are that on or about the evening of  
26 February 10, 2011, a CHP officer observed Respondent driving in the #1 lane of I-5, traveling at  
27 95 miles per hour. Respondent was using all four lanes of traffic to pass slower vehicles. The  
28 officer used his emergency lights to stop Respondent. When the officer contacted Respondent, he

1 noted the odor of an alcoholic beverage on her breath and person, her eyes were red and watery,  
2 and her voice alternated between slow and slurred and loud and incoherent. Respondent was  
3 administered a series of field sobriety tests which she was unable to complete as explained and  
4 demonstrated. Respondent was arrested for driving under the influence and placed inside the front  
5 seat of the police vehicle where she proceeded to kick the dashboard and windshield of the police  
6 car. When the officer contacted Respondent she was verbally combative and threatened the  
7 officer by telling him that she had family members who were U.S. Marshalls and that they would  
8 take care of him. When the officer attempted to close the door of the patrol vehicle, Respondent  
9 stuck her leg out blocking the door. Respondent refused verbal commands to move her leg inside  
10 of the patrol vehicle. The officer had to manually move Respondent's leg inside the patrol  
11 vehicle. Respondent refused to voluntarily take any body fluid testing. Her preliminary alcohol  
12 screening test registered .188 and .178 BAC.

#### 13 **FOURTH CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct-Use of Alcohol in a Dangerous Manner)

15 27. Respondent is subject to disciplinary action under Code section 2762(b) in that on  
16 February 10, 2011, as described in paragraph 26, above, Respondent used alcoholic beverages to  
17 an extent or in a manner that was potentially dangerous and injurious to herself, and to others in  
18 that she was driving at a high rate of speed and swerving between lanes while under the influence  
19 of an alcoholic beverage.

#### 20 **FIFTH CAUSE FOR DISCIPLINE**

21 (Unprofessional Conduct-Conviction of an Alcohol Related Criminal Offense)

22 28. Respondent is subject to disciplinary action under Code section 2762(c) in that on or  
23 about May 17, 2011, as described in paragraph 26, above, Respondent was convicted of a  
24 criminal offense involving the consumption of alcohol, which constitutes unprofessional conduct.

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1 door of her apartment. Respondent made it inside the apartment without permission. The  
2 windows next to the door were broken out and the door was off of its hinges and open.  
3 Respondent had a strong odor of an alcoholic beverage on her breath and person. The officers  
4 observed signs of obvious intoxication. Respondent was arrested and transported to the Long  
5 Beach City Jail.

6 **TENTH CAUSE FOR DISCIPLINE**

7 (Unprofessional Conduct-Use of Alcohol in a Dangerous Manner)

8 33. Respondent is subject to disciplinary action under Code section 2762(b), in that on  
9 November 9, 2009, as described in paragraph 32, above, Respondent used alcoholic beverages to  
10 an extent or in a manner that was potentially dangerous and injurious to herself and to others in  
11 that she broke a window and door to gain access to an apartment without the resident's  
12 permission.

13 **ELEVENTH CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct-Alcohol Related Criminal Offense)

15 34. Respondent is subject to disciplinary action under Code section 2762(c) in that on or  
16 about June 18, 2010, as described in paragraph 32, above, Respondent was convicted of a  
17 criminal offense involving the consumption of alcohol, which constitutes unprofessional conduct.

18 **TWELFTH CAUSE FOR DISCIPLINE**

19 (November 23, 2010 Use of Alcohol in a Dangerous Manner)

20 35. Respondent is subject to disciplinary action under Code section 2762(b) in that on  
21 November 23, 2010, Respondent used alcoholic beverages to an extent or in a manner that was  
22 potentially dangerous and injurious to her, and to others. The circumstances are as follows:

23 On or about November 23, 2010, Respondent was detained by the staff at Outback  
24 Steakhouse for failure to pay her bill (approximately \$120.00) after ordering food and three shots  
25 of alcohol. Witnesses observed Respondent place the bill from the restaurant in her wallet and  
26 leave the restaurant without paying. Upon being confronted, Respondent said she left her wallet  
27 in her car. The police were contacted. Respondent told the officers that she did not have a car  
28 and did not drive. A records check showed that Respondent's license was suspended on

1 September 13, 2010, for DUI. Further, officers discovered keys in Respondent's possession for a  
2 vehicle in the parking lot. The vehicle was registered to a rental car agency based in Los  
3 Angeles. The reporting officer noted that Respondent showed obvious signs of intoxication.  
4 Respondent was booked into detox awaiting her ride home.

5 **PRAYER**

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
7 and that following the hearing, the Board of Registered Nursing issue a decision:

8 1. Revoking or suspending Registered Nursing License Number 628722, issued to Toya  
9 Lavetta Gibson, aka Toya Lovetta Gibson.

10 2. Revoking or suspending Nurse Practitioner Certificate Number 19263, issued to Toya  
11 Lavetta Gibson, aka Toya Lovetta Gibson.

12 3. Revoking or suspending Public Health Nurse Certificate No. 70252, issued to Toya  
13 Lavetta Gibson, aka Toya Lovetta Gibson.

14 4. Ordering Toya Lavetta Gibson aka Toya Lovetta Gibson to pay the Board of  
15 Registered Nursing the reasonable costs of the investigation and enforcement of this case,  
16 pursuant to Business and Professions Code section 125.3;

17 5. Taking such other and further action as deemed necessary and proper.

18  
19 DATED: March 22, 2012

20 *Louise R. Bailey*  
21 LOUISE R. BAILEY, M.ED., RN  
22 Interim Executive Officer  
23 Board of Registered Nursing  
24 Department of Consumer Affairs  
25 State of California  
26 Complainant  
27  
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SD2009804942